

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18547
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On February 25, 2004, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable years 1998 through 2001 in the total amount of \$3,749.

The taxpayer filed a timely appeal and submitted additional information. He did not request a conference. The Tax Commission hereby issues its decision based upon the information contained in the file.

Tax Commission records suggested the taxpayer met Idaho's income tax filing requirements for the years 1998 through 2001, but he had not filed Idaho returns. The Bureau attempted to contact the taxpayer for an explanation, but he did not respond to the inquiries.

[Redacted] Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

The Bureau prepared returns on behalf of the taxpayer and sent him a NODD. The taxpayer responded by telephone. He said he lives in [Redacted], Idaho, and he has received all correspondence. He explained he did not answer the correspondence because he thought his accountant was handling the matter.

The Bureau sent the taxpayer a Power of Attorney form, which the taxpayer and his accountant completed and returned to the Bureau on April 26, 2004, along with a protest letter. The accountant wrote: “We are in appeal of the penalty findings for our client listed above. Please notify me at the numbers listed above of a time when we can discuss this matter. We appreciate your assistance in clearing this matter up for Mr. [Redacted].” The Bureau sent a letter acknowledging the appeal and spoke by telephone with the accountant on several occasions.

The taxpayer completed and returned a Residency/Domicile Questionnaire form the Bureau had sent to him. It showed he lived in [Redacted] during the period of 1998 through 2002. He said he went to school in [Redacted] after he was released from the army. He wrote he returned to Idaho each year: “Several weeks coming to repair and fix old house that I purchased to retire to after school was finished in Ga.”

February 20, 2004, the Bureau received from the accountant unsigned copies of the taxpayer’s federal income tax returns showing the same amount of taxable income as the amounts shown in IRS records and used by the Bureau to compute the Idaho tax due. On August 30, 2004, the copies of the taxpayer’s [Redacted] individual income returns for the years 2000, 2001, and 2002 were received from the accountant. Using the information contained in those returns, the Bureau recalculated the taxpayer’s Idaho income tax responsibility and allowed the taxpayer credit for the tax paid to the state of [Redacted] for 2000 and 2001. No information was submitted for tax years 1998 and 1999.

The Bureau sent the taxpayer and his accountant copies of the modified audit report showing

the adjustments and an explanation of the changes. The Bureau asked the accountant to submit a copy of the other state's returns for 1998 and 1999, if such returns existed, and asked for signed copies of the returns sent earlier.

A form stating the taxpayer accepted the Bureau's modified figures and a request for the taxpayer to sign and return that form if he agreed with the adjustments was enclosed. However, neither the taxpayer nor his accountant responded, and the taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review.

The Tax Appeals Specialist sent the taxpayer and his accountant a letter explaining the taxpayer's options regarding his appeal. The letter did not prompt a response from either of them. On March 11, 2005, the Specialist telephoned the accountant. The accountant argued the matter of physical presence and denied the possibility of the taxpayer's domicile remaining in Idaho. He promised to send further information on or before April 25, 2005.

On the promised date, the accountant called and a discussion similar to the earlier discussion ensued. He promised to send support for his argument of physical presence by May 25, 2005. The Tax Commission has received nothing further from the taxpayer or his accountant.

Tax Commission records show that, during the years 1998 through 2001, the taxpayer owned and occupied a home in Idaho as he signed an Application for an Owner-Occupied Residential Improvement Exemption on or about May 9, 1998, under penalty of perjury. That application was never rescinded resulting in the taxpayer receiving the exemption each year since 1998.

Furthermore, the records indicate the taxpayer considered himself an Idaho resident: he obtained Idaho resident driver's licenses on September, 22, 1998, and July 30, 2002; and he purchased Idaho resident fish and game licenses on September 25, 1998, January 10, 1999, April 30, 2000, and August 6, 2002. Because the records did not show the taxpayer filed Idaho resident

income tax returns, the Bureau prepared returns on his behalf.

Idaho Code § 63-3013 defined a resident as anyone who resided in the state for the entire year or was domiciled in the state. The taxpayer's statements made it clear that he did not reside in Idaho the entire time from 1998 through 2001. Therefore, the question becomes, "was the taxpayer domiciled in Idaho during this timeframe?"

From the taxpayer's statements, the Tax Commission's assumption is the taxpayer's domicile remained with Idaho. He stated he went to [Redacted] to attend school. Presumably as a student, the taxpayer's domicile remained with Idaho until he established a domicile in another state. In several forms signed under penalty of perjury the taxpayer stated he was an Idaho resident. Since the taxpayer's domicile was Idaho, making him a statutory resident, he was required to report all income from all sources to Idaho. Idaho Code § 63-3002.

However, Idaho Code § 63-3013((b) (2) provided a safe harbor exception for individuals that were absent from the state of Idaho for an extended period of time. The subsection stated, if an individual was absent from the state for a period of 15 consecutive months and was not in Idaho for more than 60 days in a calendar year after the 15 month period, then the individual, even though domiciled in Idaho, was not considered a resident and not required to file an Idaho income tax return.

There is nothing in the record or by the taxpayer's statements to suggest the taxpayer was absent from Idaho for 15 consecutive months during the period at issue. Rather, the purchase of fish and games licenses established dates the taxpayer was in Idaho after he purchased his Idaho home as an Idaho resident and left for school in [Redacted]. The purchase of a resident fish and game license requires a resident to be present in state to make the purchase. The taxpayer did not meet the safe harbor exemption.

The Bureau used the income reported to the IRS to calculate the taxpayer's Idaho income tax responsibility. He was allowed the standard deduction and one personal exemption. No withholding could be identified, but the grocery credit reduced the tax amount. The Bureau added interest and penalty pursuant to Idaho Code §§ 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them proper and in accordance with Idaho Code.

The Bureau modified the original NODD to allow the taxpayer credit for taxes paid to the state of [Redacted] for tax years 2000 and 2001 based on the unsigned returns the Bureau received from the taxpayer's accountant. The Tax Commission telephoned an individual at the [Redacted] Department of Revenue who is authorized to furnish information under the provisions of an exchange of information agreement the state of Idaho has with the state of [Redacted].

The [Redacted] Department of Revenue employee confirmed the taxpayer filed a 2000 [Redacted] individual income tax return and paid the tax shown thereon to [Redacted]. However, [Redacted] has no record of receiving a return from the taxpayer for 2001.

The Tax Commission will allow credit for taxes paid to another state for tax year 2000. Credit is not allowed for the taxes showing as paid to the state of [Redacted] in the copy of the 2001 return furnished by the taxpayer's accountant.

The modified report contained an error in the amount of credit allowed for taxes paid to another state in 2000. The correct amount of credit allowed is \$134 rather than \$80 as shown in the modified report.

WHEREFORE, the Notice of Deficiency Determination dated February 25, 2004, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 472	\$118	\$202	\$ 792
1999	491	123	174	788
2000	965	241	265	1,471
2001	472	118	93	683
			TOTAL	<u>\$ 3,734</u>

Interest is computed through August 15, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

[Redacted]